

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION

CIVIL NO. 1:08CV148

APRIL SUMMERLIN,

Plaintiff,

Vs.

MICHAEL ASTRUE, Commissioner  
of Social Security,

Defendant.

ORDER

**THIS MATTER** is before the Court on the Plaintiff's motion for reconsideration of the Court's dismissal of this case on May 13, 2008, for nonpayment of the filing fees herein.

On April 15, 2008, the Court denied the Plaintiff's application to proceed in *forma pauperis* and directed the required filing fees be paid to the Clerk within 20 days of entry of the Order. **See Order, filed April 15, 2008, at 2.** The Order warned Plaintiff that her failure to pay the fees would result in summary dismissal of the action. The deadline for payment was May 8, 2008. When the filing fee was not received and no request for an extension of time to do so was filed by Plaintiff, the Court dismissed the

action. **See Order, filed May 13, 2008.** Counsel for Plaintiff advises he did not receive a copy of the Court's April 15, 2008, Order. **Plaintiff's Motion for Reconsideration, filed May 14, 2008.** In support of the motion for reconsideration, counsel attaches an affidavit from Roberta Owens, counsel's employee, who avers that she is responsible for monitoring all of the electronic mail received from this Court to counsel's office, and no order was received on April 15, 2008, regarding to this case. **See Affidavit of Roberta Owens, *attached to Plaintiff's Motion.***

However, a report generated from the tracking system of this Court's CM/ECF software shows that the April 15, 2008, Order was indeed successfully delivered to counsel's e-mail account at [usdcadmin@wfattorneys.com](mailto:usdcadmin@wfattorneys.com) on April 15, 2008, at 13:53:52.

Because there appears to be a legitimate argument as to whether or not counsel received the April 15, 2008, Order, the Court must provide the benefit of the doubt to the Plaintiff, due to the fact that she did not contribute to or cause the clerical error, counsel's oversight, or alleged computer glitch. Therefore, in the interest of justice, the Court will grant Plaintiff's motion to reconsider and reinstate her civil action.

In a related matter, the Court notes that counsel filed an executed summons on the Commissioner of Social Security on April 29, 2008.

Because summons have never been issued by the Clerk in this matter, this return will be stricken. Counsel is advised to contact the Clerk about the proper procedure for the issuance of summons *via* the Clerk's electronic filing system.

**IT IS, THEREFORE, ORDERED** that the Plaintiff's motion to reconsider is **ALLOWED**, the Court's dismissal is **STRICKEN**, and the Clerk is directed to reopen this case and return it to the Court's active docket.

**IT IS FURTHER ORDERED** that, the Court having previously denied the Plaintiff's motion to proceed in *forma pauperis*, the Plaintiff has to and including **JUNE 13, 2008**, in which to pay the filing fees herein, or the action will be summarily dismissed.

**IT IS FURTHER ORDERED** that the summons returned filed by Plaintiff's counsel on April 29, 2008, is hereby **STRICKEN**, and counsel is directed to submit summons to the Clerk for issuance **AFTER** the required filing fees are paid.

Signed: May 29, 2008

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', written over a horizontal line.

Lacy H. Thornburg  
United States District Judge

